

No. 14646.

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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JOE MIKE AYERS,

*Appellant,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

---

## BRIEF OF APPELLEE.

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OF MIKE AYERS,

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*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

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## BRIEF OF APPELLEE.

---

### I.

#### Statement of Jurisdiction.

The Indictment in this case was returned and filed on October 13, 1954 in the United States District Court for the Southern District, Central Division of California, and charged the appellant with the violation of Section 462, Title 50, App., United States Code [Tr. pp. 3, 4].<sup>1</sup>

On November 23, 1954, the case came to trial before the Honorable James M. Carter, United States District Judge, and at the conclusion of the trial the Court found appellant guilty as charged [Tr. pp. 9, 10].

The Judgment and Commitment showing the finding of guilty was filed on December 13, 1954 [Tr. pp. 13, 14]. Notice of Appeal by appellant was filed on December 20, 1954 [Tr. pp. 15, 16].

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<sup>1</sup>"Tr." refers to Transcript of Record.

Jurisdiction in the United States District Court was conferred by Section 3231, Title 18, United States Code. Jurisdiction in this Court is conferred by Sections 129 and 1294, Title 28, United States Code.

## II.

### Statement of the Case.

The Indictment returned on October 13, 1954, charges that the appellant was duly registered with Local Board No. 140; that he was thereafter classified in Class I-A and was notified of such classification; that a notice and order to appellant to report for induction on June 9, 1954, was given appellant; and that on June 9, 1954 in Los Angeles County, California, appellant did knowingly fail and refuse to be inducted into the Armed Forces of the United States [Tr. pp. 3, 4].

On November 1, 1954, appellant appeared before the Honorable James M. Carter, United States District Judge. He was arraigned and entered a plea of not guilty. A jury waiver was executed by the appellant, was approved by the Court and was filed with the Court. The case was set for trial for November 23, 1954 [Tr. pp. 5-6].

On November 23, 1954, trial was held before the Honorable James M. Carter, without a jury, at the conclusion of which appellant was found guilty [Tr. pp. 9, 10]. On November 29, 1954, appellant filed a Motion for Judgment of Acquittal or in the Alternative for a New Trial. On December 13, 1954, this Motion was heard by the Honorable James M. Carter and was denied [Tr. pp. 11, 12].

On December 13, 1954, sentence was pronounced and appellant was sentenced to two years imprisonment [Tr. pp. 12-14]. On the same date appellant moved to be

admitted to bail pending determination of the Appeal. It was ordered that the hearing on this Motion should be continued until December 27, 1954 [Tr. pp. 14-15].

Notice of Appeal from the Conviction was filed by appellant on December 20, 1954 [Tr. pp. 15, 16]. On December 27, 1954, appellant was admitted to bail in the amount of \$1000.00 pending determination of the Appeal of this case [Tr. p. 16].

On January 24, 1955, appellant filed his Statement of Points on Appeal [Tr. p. 17].

### III.

#### Statute Involved.

The Indictment in this case was brought under Section 462 of Title 50, App., United States Code.

The Indictment charges a violation of Section 462 of Title 50, App., United States Code, which provides in pertinent part:

“(a) Any . . . person charged as herein provided with the duty of carrying out any of the provisions of this title [sections 451-470 of this Appendix], or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty . . . or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under oath in the execution of this title [said sections], or rules, regulations, or directions made pursuant to this title [said section] . . . shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than \$10,000, or by both such fine and imprisonment. . . .”

IV.

Statement of the Facts.

On August 30, 1948, the appellant registered under the Selective Service System and was assigned to Local Board No. 140, San Diego County [Ex. pp. 1, 2].<sup>2</sup> On July 11, 1950, registrant was classified by the Local Board in Class I-A, and on July 14, 1950, he was mailed an SSS Form 110, notifying him of that classification [Ex. p. 12]. The Local Board shortly thereafter received a letter from registrant appealing his classification and stating that he was presently studying for the ministry at Pasadena College [Ex. p. 16]. In a letter dated September 8, 1950, Pasadena College verified the fact that the registrant was attending that institution as a full time student [Ex. p. 17]. Shortly thereafter the Local Board received a second letter from Pasadena College stating that the registrant was preparing for the ministry at that institution [Ex. p. 19]. The Board on October 27, 1950, placed registrant in Class IV-D and on November 2, 1950 mailed to registrant SSS Form 110 notifying him of his classification [Ex. p. 12].

On February 17, 1953, the Local Board received notice from Long Beach State College that the registrant was enrolled at that institution as a special student and was pursuing only twelve units of instruction [Ex. pp. 26,

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<sup>2</sup>Exhibit I is a photostatic copy of the contents of the appellant-registrant's Selective Service file. The photostats which constitute Exhibit I are numbered consecutively and these numbers are circled. References in Appellee's Brief refer to the photostat number and not to page numbers.



7]. In a letter dated February 18, 1953, the Local Board notified the registrant that they would need additional information from him if he was to continue in Class IV-D [Ex. p. 28]. In a letter also dated February 18, 1953, the registrant claimed for the first time to be conscientiously opposed to war [Ex. pp. 29, 30]. This letter is set forth in its entirety in Appendix A of this brief. On February 24, 1953, the Local Board received another letter from the registrant which was evidently written in answer to the Local Board's letter of February 18, 1953, and which set forth the registrant's reasons for conscientious objection and for his transferring from Pasadena College to Long Beach State College [Ex. pp. 33-36]. This letter constitutes Appendix B of this brief.

On March 3, 1953, registrant filed with the Local Board a Special Form for Conscientious Objector in which he claimed to be opposed to participation in both combatant and non-combatant training and service in the Armed Forces. One Dorothy Andrus assisted registrant in preparing this questionnaire and this form was filled out almost in its entirety in the hand of Dorothy Andrus [Ex. pp. 38-43].

On March 4, 1953, registrant was classified I-A by the Local Board which mailed SSS Form 110 to the registrant on March 5, 1953. In a letter dated March 9, 1953, registrant requested a personal appearance before the Local Board and appealed his classification of I-A [Ex. p. 46]. On March 19, 1953, registrant appeared personally before the Local Board. The Selective Service file con-

tains a memorandum summarizing what occurred during this personal appearance. The Board members agreed to classify the registrant in Class I-O [Ex. p. 55]. In a letter dated March 19, 1953 directed to the Local Board the registrant further explained his viewpoint relative to conscientious objection [Ex. pp. 51-53]. The contents of this letter is set forth in Appendix C of this brief. The registrant was reclassified and placed in Class I-O on March 19, 1953. On the day following, registrant was notified of this classification [Ex. p. 12].

In a letter dated April 23, 1953 to the Local Board R. R. Sanders, Capt. U.S.A.F., Coordinator, District Headquarters No. 6, advised the Local Board concerning certain facts which had come to his attention concerning the Internatonal Christian Revival Association in which association the registrant claimed membership. Captain Saunders stated that in his opinion the facts set forth in his letter demonstrate that registrant was not entitled to a classification of I-O [Ex. p. 60]. On May 7, 1953, the registrant was reclassified I-A and the next day notice of his classification was mailed to him. In a letter dated May 13, 1953, the registrant appealed the I-A classification and requested a personal appearance. He enclosed in the letter the "articles of belief" of the organization to which he belonged [Ex. pp. 65-67]. On May 21, 1953 the registrant personally appeared before the Local Board. The Local Board voted to continue the registrant in Class I-A. A copy of the memorandum summarizing what occurred at this personal appearance is contained in the

Selective Service file [Ex. p. 71]. On May 21, 1953, registrant was notified that he had been continued in Class I-A [Ex. p. 12].

On June 18, 1953, the Local Board forwarded the Selective Service file concerning the registrant to the Appeal Board [Ex. pp. 12, 72]. The file was thereafter sent to the United States Attorney for the purpose of securing an advisory recommendation from the Department of Justice [Ex. p. 73]. After the registrant had appeared before the Hearing Officer, that officer recommended that the registrant's claim be not sustained. The Special Assistant to the Attorney General concurred in this recommendation and by letter dated March 26, 1954 notified the Appeal Board to this effect. A résumé of the investigative report of the F.B.I. was attached to and made a part of that letter [Ex. pp. 75-80]. On April 15, 1954, the Appeal Board placed registrant in Class I-A [Ex. p. 81]. On April 19, 1954, the Local Board received back the Selective Service file of the registrant from the Appeal Board and on that same date notified the registrant of his classification [Ex. p. 12].

On May 4, 1954, registrant was ordered to report for induction on May 19, 1954 [Ex. 83]. Thereafter registrant requested to be transferred for delivery to Local Board No. 135 located in Orange County [Ex. p. 84]. On June 1, 1954, Local Board No. 135 ordered registrant to report for induction on June 9, 1954 [Ex. p. 33]. On June 9, 1954, registrant reported for induction as ordered and refused to submit to induction [Ex. p. 86].

V.

ARGUMENT.

A. The Local Board's Act of Placing the Registrant in Class I-A on May 7, 1953 Was Reasonable and the Classification Was Based Upon Fact.

The decisions of the Local Board, made in conformity with the regulations, are final even though erroneous and questions previously decided by the Local Board will not be reviewed by the Courts so long as there was some basis in fact for the Local Board's decision. (*Estep v. United States* (1946), 327 U. S. 114, 122.)

On February 18, 1953 the registrant wrote a letter to the Local Board in which he stated that he was conscientiously opposed to war. This letter is reproduced in Appendix A of this brief. It was written by the registrant at the age of twenty-three, approximately four and one-half years after he had first registered with the Selective Service System, and it was the first time that the registrant had made this claim to the Local Board. It is probable that at that time the registrant's determination not to serve was of recent origin for the letter states, "I have always felt that I could not take another man's life, but now I feel that I can have no place in the war effort." (*Bradley v. United States* (C. C. A. 9, 1954), 218 F. 2d 657.) (Recent Conversion.) The registrant then wrote another missive in which he explained his reasons for leaving ministry school and stated, "I ask no favours. I only want you to know that I can have no part in this war effort. What you do with me from this point on is up to you. I know that if I want to see 'peace on earth and good will toward men' it will not come through war, but through the Gospel of Jesus

Christ my Lord. You may ask the question what then will we do with the Russians or Communists? I would answer that war has never done anything to stop them and if it did it would only be till they could regain their footing." This letter is contained in Appendix B. The registrant thus speaks of the futility of war—of its inefficiency as a tool towards gaining "peace on earth" and of the danger of not achieving permanent victory at arms. These are practical thoughts. But they are not ideas born of religious training and belief.

Appendix C contains a third letter written by the registrant and reviewed by the Local Board before determining the merits of his claim. This letter expands upon the registrant's non-religious and religious objections and in effect reaffirms General Sherman's words. But the religious characteristics of this expousal do not predominate. The registrant also filed with the Local Board an SS Form 150 in which he stated that he was opposed to war in any form, both combatant and noncombatant [Ex. pp. 38-43]. In answering question number three of this form concerning the source of his beliefs, the registrant again indicated that his objection was new, for he said, "I received this belief from the Bible. In the last few months I have come to the conclusion that this belief is in line with the word of God. . . ." [Ex. p. 39].

It is clear, therefore, that the record as it stood prior to March 19, 1953 would have furnished ample justification for the Local Board to classify the registrant I-A on that date. They didn't. They placed him in Class C-O.

On April 24, 1953 the Local Board received a letter from one R. R. Sanders, Captain, USAF, in which Cap-

tain Sanders stated, concerning the International Christian Revival Association,

“The investigation revealed that this organization has, at present only some 20 members, and that they are supervised by Mr. George E. Andrus, 5742 F. Thelma Avenue, Buena Park, California. Mr. Andrus was contacted this date, and stated that he was ordained in 1946. He advised that subject religious organization was incorporated in 1951 and verified a statement made by the Santa Ana registrant that the group decided, on 18 November 1952, that they were conscientiously opposed to war and, on that date, passed a resolution to that effect. [Ex. p. 60.]

Two weeks later the Local Board reclassified the registrant I-A. Appellant contends that he was reclassified I-A solely as a result of this letter and further:

“The record is devoid of any evidence, other than this letter from Captain Sanders, upon which the Board could have acted.” (Br. of App. p. 8.)

This contention is pure speculation and sophistry. It is speculative to state that the Local Board acted for one reason when the record furnishes many additional reasons for this action. It is sophistic to argue that the record is devoid of evidence excepting this letter upon which the Local Board could have acted. The record is replete with such evidence. Appellant's argument is evidently based upon the fact that no evidence intervened between the date when the Local Board received the letter from Captain Sanders and the date upon which the registrant was reclassified I-A. The argument assumes that the Local Board was foreclosed from reconsidering evidence contained in the Selective Service file after it had once been considered. Such an assumption is untenable. The Local

Board is duty bound to re-examine all the evidence in the course of determining whether or not to reclassify a registrant.

It is however a fair inference from the evidence that the letter from Captain Sanders resulted in the attentions of the Local Board being again directed to this particular registrant in the light of the new asserted facts contained in that letter. The letter concerned itself with the organization to which the registrant claimed membership. The nature and beliefs of the institution are highly important in determining the proper classification of the individual. The conscientious objection which is recognized by the Law as constituting a proper basis for exemption is one which is based upon religious training and belief. Therefore the vital questions which the Local Board must concern itself with when inquiring into each individual's claim are—From whence the religious training?—From whence the belief? The Local Board is vested with the responsibility of determining whether the individual's belief is so deep seated as to be conscientious. (*White v. United States* (C. C. A. 9, 1954), 215 F. 2d 782.) A necessary inquiry therefore, although never determinative in and of itself, is how long-standing, how encompassing, and how permanent are the beliefs of the organization to which the individual belongs. This thesis in no way alters or mitigates against the fact that it is the individual's beliefs which are the primary concern of the Selective Service System when passing upon the individual's claim.

The letter from Captain Sanders brought to the attention of the Local Board the asserted fact that prior to November 18, 1952 beliefs of the International Christian Revival Association did not include opposition to war,

but on that date the group *passed a resolution* conscientiously opposing war. Resolutions which are passed by an organization (perhaps by majority vote) can be rescinded by the organization. What then of the registrant's beliefs? Under these circumstances it was incumbent upon the Local Board to reexamine the claim of the registrant and in doing so to review the entire file. This review would necessarily include the registrant's letters (Appendices A, B and C) and his viewpoints which are therein evidenced and have been discussed previously. The letter of February 18, 1953 (App. A) contains the words, "I don't believe there is a church today which is standing for the teachings of Jesus Christ, or living as the first Christian church did." The registrant then states, "I'm in just a small group of people, and we are trusting Christ and His Word that He will give us a revival for our day." Reading these two expressions together it appears very unlikely that the registrant considered the International Christian Revival Association a church. In the letter of March 19, 1953 (App. C) the registrant stated,

"The church people of our day do not believe what Christ taught, for if they did they too would stand for Him and see our war-torn world brought to Him. When I say the church people today don't believe what Christ taught, I mean just that. . . . But this hardly ever happens, for as soon as they start following God the preachers of today lead them into darkness . . ."

The disillusionment and confusion shown by these letters taken together with the other facts shown by the registrant's file undoubtedly convinced the Local Board that the registrant's objections were not primarily religious nor were they so deep seated as to entitle him to the exemp-



tion. The Board may have noticed that compared to the SSS Form 150 (Special Form for Conscientious Objector) the earlier expressions by the registrant of the reasons for his claim contained in his letters were fairly articulate. As mentioned earlier the SSS Form 150 was written in the hand of one Dorothy Andrus who resides at the same address as Mr. George E. Andrus, the head of the International Christian Revival Association. The Local Board may have doubted that the convictions and the scriptures quoted in support thereof expressed in the SSS Form 150 were in fact the convictions of the registrant.

Captain Sanders closed his letter to the Local Board by expressing his opinion that the I-O classification was unwarranted. The record does not disclose the exact role of Captain Sanders in the Selective Service organization. His unsolicited opinion was certainly not binding upon the Local Board and even had the Board members paid undue attention to that opinion the case at hand would in no way resemble the situation presented in *Hinkle v. United States* (C. C. A. 9, 1954), 216 F. 2d 273; *Goetz v. United States* (C. C. A. 9, 1954), 216 F. 2d 270; and *Shepherd v. United States* (C. C. A. 9, 1954), 217 F. 2d 942. In those cases and others the Department of Justice recommended against sustaining the claim of the registrant and this recommendation was based upon an erroneous interpretation of the Law. The Law expressly provides that there shall be a recommendation from the Department of Justice as an aid to the Appeal and Local Boards, and it is intended that these Boards shall pay heed to and to some extent shall be influenced by the Department's recommendation. It would be surprising if Captain Sander's opinion were to be given the same dignity.

**B. The Classification by the Appeal Board on April 15, 1954 Had Basis in Fact.**

Inasmuch as it is the duty of the Appeal Board upon appeal to classify the registrant *de novo* any error which was committed by the Local Board can be disregarded by this Court. Such error will not have prejudiced substantial rights of the registrant. (*Tomilson v. United States* (C. C. A. 9, 1954), 216 F. 2d 12, 16; *Goetz v. United States, supra*, 272; *Hinkle v. United States, supra*, 9 (n. 3); and others.) This rule was held inapplicable to the particular facts of *Franks v. United States* (C. C. A. 9, 1954), 215 F. 2d 266 because the error of the Local Board related to the personal appearance of the registrant, but that is not the situation in the case at hand.

The résumé of the investigative report [Ex. pp. 78-80] discloses that among those interviewed there was complete divergence of opinion as to whether the registrant was sincere in his beliefs; that a leader of the International Christian Revival Association expressed the opinion that the registrant "was not worthy" of a conscientious objector classification; that in August 1953 the registrant was dropped from the rolls of that organization; that at the time of the investigation the registrant had returned to the Church of the Nazarene; and that a former employer stated that the registrant was "unstable in his thinking" regarding religious matters.

After the registrant had personally appeared before the Hearing Officer, that officer reported in part as follows:

"The Hearing Officer reported that the registrant stated that he was opposed to participation in war in any form. The registrant advised the Hearing Officer, however, that he believed that it was proper

for governments to carry on wars and that people should be in the Army. He stated that he believed that it is satisfactory for those who choose to protect themselves through the use of force. He does not believe that he should participate in war. The registrant stated that he did not expect to be exempt because of his activities in the International Christian Revival Association, and would not expect to be exempt from active participation in war based upon the teachings of the Association, but that he would do violence to no man, and that if his family were attacked he would do nothing. He stated that he had not participated in any outward activities of a church nature. He stated that he had just been straightened out and that he had now found the simplicity of "walking with Christ as a Christian man."

The Hearing Officer and the Department of Justice recommended that the registrant's claim be not sustained.

It is thus apparent that there was ample evidence before the Appeal Board to justify a classification of I-A.

**C. Both the Local Board and Appeal Board Considered the Registrant's Qualifications for Class I-A-O Before They Classified Him I-A.**

Registrant was given consideration to determine whether he qualified for Class I-A-O. In *Koch v. United States* (C. C. A. 4), 150 F. 2d 762, it is stated at page 763:

"A presumption of regularity attaches to official proceedings and acts; it is a well settled rule that all necessary prerequisites to the validity of official action are presumed to have been complied with, and where the contrary is asserted it must be affirmatively shown."

At the time of trial of this case the appellant offered no evidence to refute this presumption of regularity and he may not now request this Court to speculate that the procedures of the Local and Appeal Boards were incorrect.

VI.

**Conclusion.**

Judgment should be affirmed.

Respectfully submitted,

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## APPENDIX A.

LOCAL BOARD No. 140      4-140-29-496  
SAN DIEGO COUNTY      2-18-53  
Feb. 20, 1953      29-496  
Room 222, 525 E Street  
SAN DIEGO, CALIFORNIA

Dear Sirs:

Because of my religious belief I find it my responsibility to notify you in that I am a conscientious objector. I have always felt that I could not take another mans life, but now I feel that I can have no place in the war effort.

I have studied the Bible and find that Jesus Christ taught that there is only one way to over come evil and  
ago  
that is with good. The world would have long been Christian if the church had followed Christ's teachings. But they failed when they started to fight their way out in 313 A.D.. I don't believe there is a church today which is standing for the teachings of Jesus Christ, or living as the first Christian church did.

I'm in just a small group of people, and we are trusting Christ and His Word that He will give us a revival for our day. There is no other hope in the world, for the people's standard of morals must rise before the Nation will.

In closing I would like to request a form to fill out for being a Conscientious objector. And I would like to leave you my present address:

Joe Ayers  
3136 Anaheim  
Long Beach, Calif.

APPENDIX B.

4-140-29-496

LOCAL BOARD No. 140

San Diego County

Feb. 24, 1953

Room 222, 525 E. Street

San Diego, California

Dear Sirs,

I received your letter and hope that you have received the letter which I sent to you.

Last semester I was attending Pasadena College, which is a theological school. Truth and the Bible were overlooked and I had to speak up against the sin which went on in the campus. The President of the college did not care for my protest. Nor did some of the professors. I then felt it best that I remove myself from the theological school. Then realizing that there are no church schools which are teaching the Bible in the true since, and wanting to finish my college work I inrolled at Long Beach State College. My transcript containing a few low grades which I received when in my lower part of college, I was placed as a special in Long Beach State College (carring only 12 units). I was converted  
high

in my last year of ~~college~~ school, and also called to preach. Before this time (all through school) I had done very little school work, this now shows up in my studying in College. My grades have come up to a "C" average.

I do appreciate all that you have done for me in the past. I now stand at your mercy. I ask no favours. I only want you to know that I can have no part in this war effort. What you do with me from this point on is



up to you. I know that if I want to see "peace on earth and good will toward men" it will not come through war, but through the Gospel of Jesus Christ my Lord. You may ask the question what then will we do with the Russians or Communists? I would answer that war has never done anything to stop them and if it did it would only be till they could regain their footing.

I know not if you are God fearing men or not. But if the God in whom I believe in is able to create man He is also able to stop any Russian or Communist. For the God I know holds men's breath in His hand, that is He allowes you and I to live.

I do not claim to be a pacifist. I will fight that which is wrong with all my might, but I will choose my own weapons, that being of love and of strong rebuke, backed by the Almighty Hand of God.

I find it impossible to kill man and remain Christian.  
claim to

I do not care who else might think so or / do so. The Word of God plainly tells us "Thou Shalt Not Kill."

JOE AYERS

3136 Anaheim St.

Long Beach, Calif.

## APPENDIX C.

4-140-29-496

3-19-53

Dear Sirs:

I was asked to write to the Board (#140) and give information on the beliefs I have concerning war.

I would like to say first that I don't believe war has ever brought lasting peace. And I don't believe it will ever do so. But I do believe that the world can have peace. That is to say I believe that there is a stronger power than physical force. I believe that if the people today had any backbone and would believe and stand upon the principles which Jesus Christ gave we would see World peace. But as long as one man holds a gun or sword over the other there will be war.

After the time of Jesus Christ, His Apostles took their know world. Not with guns or swords but with hearts filled with love for mankind. The church people of our day do not believe what Christ taught, for if they did they too would stand for Him and see our war-torn world brought to Him. When I say the church people today don't believe what Christ taught, I mean just that. Yet I do realize that there are people doing the best they can today. If they continue in the light which God gives, they will also trust God for world peace and have victory in their own hearts & lives in all their problems. But this hardly ever happens, for as soon as they start following God the preachers of today lead them into darkness, even as Christ told us they would, when he said, "the blind shall lead the blind and both shall fall into the ditch."

I do not feel I can take any part in the Armed Services. I feel if I were to even go in as a Chaplin or a Medical Helper I would be taking part in that which I am standing against, and how can a house stand which is divided. I must be true to God first.

I will stand and fight for this our America or the world, but I refuse to use the means which the world is using to gain peace. Jesus Christ said, "they that take the sword shall perish by the sword." This is true of the country as well as of the individual. If you fight and even win in one time, the enemy will return half slain and slay you. So the only way to have peace is to do as Christ taught when he said, ". . . overcome evil with good."

JOE AYERS

